

In the Matter of License No. 177124 and Merchant Mariner's Document No. Z-150941  
Issued to: FREDERICK ROBERT MICHELSEN

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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FREDERICK ROBERT MICHELSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 19 July, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked License No. 177124 and suspended Merchant Mariners Document No. Z-150941 issued to Frederick Robert Michelsen upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Third Mate on board the American SS FLYING ENTERPRISE under authority of his duly issued license, on or about 9 June, 1947, while said vessel was in the port of Bombay, India, he wrongfully assaulted, with a deadly weapon (a loaded revolver), the Chief Mate, the Junior Third Mate, the Radio Operator, and the Junior Third Assistant Engineer; and on or about 2 July, 1947, while said vessel was in Hong Kong, China, he wrongfully threatened the Second Mate with a deadly weapon; to wit, a fire axe. A third misconduct specification upon which the order was based alleges that while serving as an able seaman on board the American SS SALEM MARITIME under authority of his Merchant Mariner's Document No. Z-150971, on or about 19 February, 1952, Appellant wrongfully used said document to which he was not lawfully entitled because of an order issued by a Coast Guard Examiner on 22 January, 1952, and received by Appellant on or before 17 February, 1952.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Junior Third Mate as well as documentary exhibits consisting of the deposition of the Second Mate, the deposition of the Radio Operator, certified copies of entries in the Official Logbook, certified extracts from the Shipping Articles of the FLYING ENTERPRISE, a Consular Report and several documents pertaining to the alleged offense in 1952.

In defense, Appellant testified under oath in his own behalf. He denied threatening anyone with a gun at Bombay or threatening the Second Mate with a fire axe at Hong Kong. Appellant

repeatedly stated that both incidents occurred because the Chief Mate attempted to take over the watch while he was intoxicated. He also stated that he did not realize that the Examiner's order in 1952 affected his document as well as his license and that he had not intentionally violated the order of suspension.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order revoking Appellant's License No. 177124 and all other licenses issued to Appellant, and suspending Appellant's Merchant Mariner's Document No. Z-150941, and all other certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority for a period of two years - one year outright from 24 February, 1954, and one year on 2 years probation from the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that testimony given seven years after the incidents, by persons who were intoxicated at the time of the incidents, is not adequate proof of the specifications. Appellant states that although it is difficult to remember after seven years, he believes that the following facts are the truth:

As to the Bombay incident, Appellant did not shove a gun in anyone's stomach. Appellant turned the watch over to the Junior Third Mate after refusing to turn it over to the Chief Mate.

At Hong Kong, there was no dispute ashore or on board the ship between the Second Mate and Appellant. The fire axe in question was used by the Chief Mate to batter in the door to Appellant's quarters, after which Appellant used the ship's revolver to force the Chief Mate to surrender the axe. Appellant then found the Second Mate and was relieved of the watch. Appellant does not remember whether he was still carrying the fire axe at that time. After he was relieved by the Second Mate, Appellant went to his quarters; but, shortly afterwards, the Chief Mate and two policemen broke into Appellant's quarters and forcibly removed him from the ship without the Master's knowledge. The Master was ashore at the time.

In conclusion, Appellant states that both the Bombay and Hong Kong incidents were the result of trouble between him and the Chief Mate. Appellant claims that both incidents have been distorted and he respectfully requests that the charges be dismissed or that the severe order be mitigated.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

From 9 May, 1947, until 3 July, 1947, Appellant was serving as Third Mate on board the American SS FLYING ENTERPRISE and acting under authority of his duly issued license while the ship was on a foreign voyage.

On 9 June, 1947, Appellant was standing the 2000 to 2400 port watch while the ship was at Bombay, India. Appellant had at his disposal a revolver which the Master had issued for the use of the watch officers in the Far East. The Junior Third Mate was Appellant's regular relief for the following watch. Appellant had been drinking alcoholic beverages during his watch but he was not intoxicated.

At approximately 2345 on this date, the Chief Mate, Junior Third Mate, Radio Operator and Junior Third Assistant Engineer returned to the ship from shore leave. All four of these officers had been drinking heavily and the Chief Mate was intoxicated to such an extent that he was not in condition to stand a watch. The Chief Mate became angry with Appellant in connection with something pertaining to the loading of cargo on the ship. An argument followed between the two men and the Chief Mate ordered Appellant to turn over the watch to the Chief Mate. Although the Master was ashore at this time, Appellant refused to comply with the Chief Mate's order because of his condition. The Chief Mate then ordered Appellant to turn over the watch to the Junior Third Mate but Appellant temporarily refused to do so while the dispute continued and he went to the Junior Third Mate's quarters with the latter and the Chief Mate. At this time, Appellant brandished the revolver in a threatening manner and placed the muzzle of the revolver against the Junior Third Mate's stomach. Since he was in fear of physical injury, the Chief Mate left the ship and remained on the dock for a short period of time before returning to the ship. In the meantime, peace was restored after the Chief Mate left the scene of the argument and the Appellant turned over the watch and the revolver to the Junior Third Mate at approximately 0015.

While the ship was at Hong Kong, China, on 2 July, 1947, Appellant and the Second Mate were ashore drinking intoxicants. They became engaged in a dispute which was continued, together with the drinking, when the two men returned to the ship that evening. At about 2130, Appellant obtained possession of a fire axe and started to look for the Second Mate. The Chief Mate, Junior Third Mate and Radio Operator saw Appellant with the fire axe and Appellant asked the Junior Third Mate if he had seen the Second Mate. When the Second Mate became aware of the circumstances, he went ashore. The Chief Mate sent for the local police and assisted them in removing Appellant from the ship to a jail ashore even though Appellant had retired and was asleep when the police arrived on board.

On the following day, the Master of the ship requested the American Consul at Hong Kong to remove Appellant from the ship because he was considered to be a menace to the safety of the men and the ship. On the bases of the above two incidents, the American Consul agreed to discharge Appellant. Appellant's removal from the ship was effected on 3 July, 1947, and he was later repatriated to the United States.

On 22 January, 1952, a Coast Guard Examiner suspended Appellant's licenses, certificates and merchant mariner's documents for a period of eighteen months (twelve months outright suspension and six months on twenty-four months probation from 22 January, 1952) as the result of an in absentia hearing. The Examiner's decision was mailed to Appellant and receipted for by his mother on 11 February, 1952. Appellant later made reference to this decision in a letter to the Examiner. The envelope in which the Appellant's letter was mailed was postmarked on 17

February, 1952. On 19 February, 1952, Appellant used his suspended Merchant Mariner's Document No. Z-150941 to sign on the American SS SALEM MARITIME as an able seaman. He remained on the ship for two voyages until 18 March, 1952.

Appellant's prior record consists of a fifteen day suspension in 1943 for misconduct; a four month outright suspension, plus a probationary suspension in 1944, for failing to stand watch, intoxication, disorderly conduct, assault and battery, assault with a knife, assault with a revolver, threatening the Master of the ship, and making an illegal and untrue entry in the rough deck logbook; and a one year suspension plus probationary suspension in 1952 for assaulting the Master of the ship while he was engaged in navigating the ship away from a dock.

### OPINION

Due to the lapse of time since the two incidents which occurred in 1947, there is a considerable amount of inconsistencies and vagueness in the testimony presented against the Appellant. Nevertheless, there is substantial evidence to support the findings herein which are basically in accord with the findings made by the Examiner. In turn, the findings are adequate to support the allegations contained in the specifications except that the assault at Bombay did not extend to the Radio Operator and the Junior Third Assistant Engineer. Both the testimony of the Junior Third Mate and that of Appellant indicate that they and the Chief Mate were the only persons present after the argument commenced between the Chief Mate and the Appellant.

In arriving at his findings, the Examiner necessarily rejected a considerable portion of Appellant's testimony, relating to the two incidents in 1947, in favor of the testimony of the Junior Third Mate, the only other witness who appeared at the hearing, and the depositions of the Second Mate and Radio Operator. (The contentions on the merits, which have been raised on appeal, are substantially the same as Appellant's testimony at the hearing.) Since the Examiner who heard and observed the witnesses was in the best position to judge their credibility, his ultimate findings as to these two specifications will be sustained with the exception noted above.

With respect to the Bombay incident, there is no evidence that Appellant was justified in using the revolver either in self-defense against anticipated physical injury to himself or in the discharge of his duties as the officer on watch. Apparently, there was a heated argument between Appellant and the Chief Mate but there is no evidence in the record which indicates that the Chief Mate or the Junior Third Mate made any move to forcibly relieve Appellant of the watch or the revolver. This is supported to some extent by the testimony of both Appellant and the Junior Third Mate that the three men went to the Junior Third Mate's quarters rather than that the other two went to Appellant's quarters to force him to turn over the watch to the Junior Third Mate. Therefore, the element of unlawfulness, which is necessary to constitute an assault, was present.

In view of the seriousness of these two breaches of discipline by Appellant, the offenses cannot be overlooked despite the length of time since they occurred. Appellant does not contend that, as a result of the delay, his case has been prejudiced with respect to obtaining evidence in his defense.

The American Consul at Hong Kong agreed to remove Appellant from the ship; and although the Consular Report contains hearsay evidence, the decision of the Consul is worthy of serious consideration since it was made on 3 July, 1947, which is much closer, in point of time, to the incidents than the testimony and depositions which were taken seven years later. The Examiner satisfactorily took this lapse of time into consideration by not revoking Appellant's Merchant Mariner's Document after concluding that Appellant is not fit to serve as a licensed officer.

The findings completely support the specification alleging that Appellant wrongfully used his document in 1952. Appellant does not deny that he so used his document but he testified that he did not intend to do so. Since the Examiner's order extended to all Appellant's licenses, certificates and documents, Appellant received adequate notice, as to the extent of the order, when he came into possession of the Examiner's decision at some time prior to 17 February, 1952. Therefore, Appellant violated the order of suspension against his document when he used it to obtain employment on the SS SALEM MARITIME from 19 February, 1952, to 18 March, 1952.

For these reasons, the order of the Examiner will be sustained.

#### ORDER

The Order of the Examiner dated at New York, New York, on 19 July, 1954, is ~~THE~~ AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 17th day of March, 1955.